

FILED

FEB 15 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD WILLIAM ROGERS, JR.,

Defendant - Appellant.

No. 05-50076

D.C. No. CR-04-00084-JFW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted February 8, 2006^{**}
Pasadena, California

Before: THOMPSON, TROTT, and BEA, Circuit Judges.

We assume without deciding Rogers did not waive the right to appeal his sentence on Sixth Amendment grounds. The Sixth Amendment does not require a

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jury to find the facts underlying the imposition of a mandatory minimum sentence.

See United States v. Dare, 425 F.3d 634, 641 (9th Cir. 2005).

Whoever violates 18 U.S.C. § 2252A(a)(5) shall be “imprisoned for not less than 10 years,” “if such person has a prior conviction . . . under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor.” 18 U.S.C. § 2252A(b)(2). Rogers’ prior conviction for violating California Penal Code section 288(a) constitutes “sexual abuse of a minor.” *See United States v. Baron-Medina*, 187 F.3d 1144, 1147 (9th Cir. 1999). It, therefore, also constitutes “sexual abuse . . . involving a minor.” 18 U.S.C. § 2252A(b)(2).

AFFIRMED.